

Appl. No.: 10/693,154  
Amdt. dated 01/12/2005  
Reply to Office action of dated December 3, 2004

### **REMARKS/ARGUMENTS**

The Office Action of December 3, 2004 rejected all of the pending claims of the above-identified patent application. Specifically, the Examiner rejected Claim 1 as anticipated by van Helken *et al.*, Claims 4-9 as anticipated by Swenson *et al.*, and Claims 2-3 as rendered obvious by Swenson *et al.*

The Applicant respectfully traverses each of the Examiner's grounds for rejection and respectfully submits that the Examiner has not set forth a *prima facie* showing of either anticipation or obviousness. Therefore, each of the present rejections must be withdrawn.

#### ***Support for New Claims 10 through 14***

New Claim 10 duplicates Claim 1 (as originally filed), except that (1) the term "vertical" has been replaced with the term --horizontal-- to clarify the subject matter claimed and (2) the preamble has been simplified. This claim is presented because the Examiner appears to have construed the Applicant's "vertical pivot axis" to refer to a vertically orientated axis for pivotal motion and not an axis for vertical pivotal movement. However, the Applicant intended the latter and not the former. Moreover, this feature is described in several of the Figures originally filed in the above-identified application, including Figs. 11-19. Thus, new Claim 10 is intended to claim the subject matter that original Claim 1 was intended to claim and is sufficiently supported by the application as originally filed.

New Claims 11 and 12 add the limitation of the armrest being mounted at least about 6 inches above a rear portion of the seat of the chair. This limitation is described in paragraph 144 of the application as originally filed. Therefore the specification, as originally filed, provides adequate support for new Claims 11 and 12.

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New Claim 13 begins with the subject matter of original Claim 2. New Claim 13 adds the recitation that this method is practiced "in a chair in which the distal end of the armrest is the end of the armrest closest to the user's fingertips when the user sits in the chair in a conventional manner". The Applicant respectfully submits that this characterization of the chair that is used for the claimed method is described repeatedly through out the above-identified application, including, for instance, Fig. 1. Consequently, the application, as originally filed, provides adequate support for new Claim 13.

New Claim 14 reiterates the subject matter of original Claim 4, but specifies that the chair is an office chair and that it is mounted on a pedestal. The above-identified application repeatedly discloses this additional description of the subject matter of Claim 14. *E.g.*, Fig. 1. Consequently, the application, as originally filed, provides adequate support for new Claim 14.

In sum, the Applicant respectfully submits that each of the new claims is well supported by the application as originally filed.

**The Rejections alleging Anticipation**

***The van Hekken et al. Reference***

The Applicant respectfully submits that the van Hekken *et al.* reference is not prior art to the above-identified patent application because this reference is subsequent, and not prior, to the Applicant's claimed invention. Moreover, the van Hekken *et al.* reference does not disclose the claimed subject matter. For either reason, the Applicant respectfully submits that the Examiner's rejection of Claim 1 as anticipated by the van Hekken *et al.* reference is improper and must be withdrawn.

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*Not Prior*

The van Hekken *et al.* reference is not prior art to the above-identified patent application because this reference is not prior to the invention claimed in the above-identified application.

The van Hekken *et al.* reference matured from an application filed on September 24, 1999. The above-identified patent application claims priority from applications filed in April and June, 1999. Thus, the above-identified application is prior to, not subsequent to, the van Hekken *et al.* reference.

Nonetheless, the van Hekken *et al.* reference claims priority from U.S.S.N. 08/868,678 filed June 4, 1997. Thus, the earliest possible effective filing date of the van Hekken *et al.* reference is prior to the Applicant's priority date.

However, as shown in the Applicant's parent application, U.S.S.N. 10/155,331, the Applicant conceived and reduced his invention to practice at least as early as January, 1996. Thus, the Applicant's invention antedates the van Hekken *et al.* reference. Consequently, the above-identified application is prior to van Hekken *et al.* Therefore, the van Hekken *et al.* reference is not prior art to the above-identified patent application. Consequently, for this reason alone, the rejection based on the van Hekken *et al.* reference must be withdrawn.

*Does Not Disclose the Claimed Subject Matter*

When Claim 1 of the above-identified application is properly construed, the van Hekken *et al.* reference does not anticipate the subject matter of Claim 1 because the van Hekken *et al.* reference does not disclose the subject matter of Claim 1. The Applicant respectfully submits that the Examiner has misconstrued the scope of Claim 1.

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The Applicant acknowledges that the Examiner is entitled to apply the broadest reasonable construction to the claims. Indeed, the construction the Examiner implicitly appears to have applied, on an initial analysis, appears reasonable. However, when studied in more detail, it is apparent that the Examiner's implicit construction of Claim 1 is not proper. The Examiner's implicit construction of Claim 1 is improper because it ignores the specification, including drawings, of the above-identified application as filed. Because the Examiner's claim construction ignores the specification, it is not a reasonable construction and must be withdrawn.

The Applicant respectfully submits that when a proper construction is applied to Claim 1, the claimed subject matter is not disclosed by the van Hekken *et al.* reference, and thus Claim 1 is not anticipated.

In the armrest of the claimed subject matter, as shown in Figs. 11 through 19, an armrest support (e.g., 625 of Fig. 11) is rotatably attached to a pivot axis (e.g., 660 in Fig. 11) that is in that is in the horizontal plane for vertical movement. Such a pivot axis in a horizontal plane for vertical movement is the structure called for by the phrase "a vertical pivot axis attached to an armrest support arm" in Claim 1.

To further clarify the matter, the Applicant has submitted new Claim 10 in which this axis is referred to as a horizontal pivot axis.

In any event, Claim 1 is directed to an armrest having a pivot axis for **vertical movement**, *i.e.*, a pivot axis in a horizontal plane. In contrast to the claimed subject matter, the van Hekken *et al.* reference discloses an armrest having a pivot axis for **horizontal movement**, *i.e.*, a pivot axis in a vertical plane. Thus, the van Hekken *et al.* reference discloses a pivot axis

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that is perpendicular to, and not, the claimed subject matter. For this further reason, the rejection based on the van Hekken *et al.* reference must be withdrawn.

***The Swenson et al. Reference***

The Applicant respectfully submits that the Swenson *et al.* reference does not teach the subject matter of Claims 4-9. Indeed, it appears that the Examiner has misconstrued the Swenson *et al.* reference. The Applicant respectfully submits that when the Swenson *et al.* reference is properly construed, it discloses a device that is substantially different from, and therefore does not anticipate, the claimed subject matter.

***The Misconstruction of the Swenson et al. Reference***

Specifically, the Examiner states that "Swenson shoes (sic) the use of a support (16) for a back of a chair connected to a base of the chair . . ." Office Communication at 2. The Applicant respectfully submits that this is a mischaracterization of the Swenson *et al.* reference. Swenson *et al.* expressly characterize the structure identified by call out number 16 as "a backrest assembly". Col 2, lns. 58-59. This "backrest assembly" includes "resilient compressible material, such as foam or sponge rubber or the like [and] flexible exterior upholstery covers". Col. 3, lns. 9 – 18. The Applicant respectfully submits that neither foam, sponge rubber, nor a flexible exterior cover could support either the back of a chair, or a link to an armrest body.

In contrast to backrest assembly 16, the structural component of backrest assembly 16 as described in Swenson that might be used as "support for a back of a chair" of Claim 4 are "rigid stamped sheet metal frames or pans 34 and 35". Col. 3, lns. 10-11 and Figs. 1 and 2. However, there is no bracket mounted on the sheet metal frames or pans 34 or 35 to which links mounting an armrest body are attached. Thus, if the Swenson *et al.* reference is properly construed, the

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reference does not disclose the subject matter of Claim 4. Therefore, the rejection of Claim 4 as anticipated by Swenson *et al.* must be withdrawn.

Indeed, Swenson does not disclose any link mounting an armrest body attached to backrest assembly 16. Thus, the Swenson *et al.* reference does not support the Examiner's contentions.

Moreover, the Examiner appears to have abandoned his assertion that backrest assembly 16 is the support when the rejection is applied to Claim 8. Claim 8 calls for a parallel arm mechanism mounted at a first end to the back support. While the Swenson *et al.* reference might describe a parallel arm mechanism for his adjustable arm, the parallel arm mechanism of Swenson *et al.* is attached to "connector plate[] 18". Col. 3, ln. 45 and Fig. 1. Thus, if Swenson *et al.* described the subject matter of Claim 8 -- which the Applicant contends it does not-- , then its backrest assembly 16 is not the support the Examiner contends back rest assembly 16 is. In any event, it is clear that the Swenson *et al.* reference does not describe the subject matter of Claim 4.

Because the Examiner has incorrectly construed the cited reference, the Examiner has not made a *prima facie* showing of anticipation. Moreover, because the cited reference discloses something completely different that is claimed, the Examiner has not made a *prima facie* showing of anticipation. For either of these reasons, the present rejection must be withdrawn.

***Properly Construed, the Swenson et al. Reference discloses a different device***

The Applicant respectfully submits that when Swenson *et al.* is properly construed, it does not disclose the subject matter of either Claim 4 or 8. Thus, the present rejection must be withdrawn.

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For instance, the subject matter claimed by Claims 4 and 8 calls for a device to support an armrest body that is mounted from the back support of the chair. In marked contrast, Swenson *et al.* describe a device to support an armrest body that is mounted from a connector plate 18, a portion of the chair below the seat. *See* Fig. 1.

In presumably discussing Claim 7, the Examiner also asserts that Swenson discloses “[a] locking mechanism (73) [which] comprises a slider-crank . . .” Office Communication at 3. However, the Examiner does not allege that Swenson *et al.* disclose a slider. Because the Examiner has not shown that the Swenson *et al.* reference discloses a slider in its locking mechanism, the Examiner has not made a *prima facie* showing of anticipation. Consequently, the present rejection must be withdrawn.

In view of the absence of a slider, the Applicant respectfully submits the Examiner’s characterization of Swenson is wrong. Instead of a slider-crank, Swenson expressly describes 73 as an “arm rest adjustment knob[.]”. Col. 3, lns. 62-63.

A slider-crank joint has a slider. *See e.g.*, Reuleaux, Franz, and Alex B.W. Kennedy (ed.), and Alex B.W. Kennedy (trans.), *Kinematics of Machinery : Outlines of a Theory of Machines*, §69, Figure 214, Macmillan and Co., 1876 (A slider-crank joint includes a slider that moves along a defined path. *See* <http://kmoddl.library.cornell.edu/model.php?m=28>, viewed December 29, 2004). The Examiner has not shown where the disclosure of the Swenson *et al.* reference describes a slider in connection with an arm rest adjustment knob. Thus, for this further reason, the Examiner has not shown that the Swenson *et al.* reference discloses the subject matter of Claim 7.

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In sum, when the Swenson *et al.* reference is properly construed, the Applicant respectfully submits that Swenson *et al.* reference does not disclose the subject matter of Claims 4-9. Therefore the anticipation rejection must be withdrawn.

**The Rejections alleging Obviousness**

The Examiner rejected Claims 2-3 as obvious in view of Swenson *et al.* Specifically, the Examiner appears to allege that the claimed method would be inherent in the operation of the device disclosed by Swenson *et al.* The Applicant respectfully traverses the Examiner's position, and submits that the substantial differences between the claimed method and the operation of the device disclosed by Swenson *et al.* establishes that Swenson *et al.* could not possibly anticipated the device claimed by Claims 4-9.

**Claim 2**

When the Swenson *et al.* reference is compared to the subject matter of Claim 2, it is clear that Swenson *et al.* teach away from, and does not render obvious, the claimed subject matter. For instance, Claim 2 requires the user to "rais[e] the distal end of the armrest to an altitude greater than the altitude of the medial end of said armrest".

To parse this limitation, we need to understand what is "the distal end", and what is "the medial end", of the armrest.

The common and ordinary meaning of the word "distal" is: "2. Situated farthest from the middle . . ." The American Heritage® Dictionary of the English Language, Houghton Mifflin Company (4th Ed. 2000) (viewed online at <http://dictionary.reference.com/search?q=distal> on December 30, 2004). Thus, "the distal end of the armrest" is the end of the armrest furthest



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from the middle of the chair. This end of the armrest is the end that is closest to the user's fingers in normal use of the armrest.

The common and ordinary meaning of the word medial is: "[r]elating to, situated in, or extending toward the middle; median". *Id.* (viewed online at <http://dictionary.reference.com/search?q=medial> on December 30, 2004). Thus, "the medial end of the armrest" is the end of the armrest closest to the middle of the chair. This end of the armrest is the end that is adjacent to the back of the chair.

In the subject matter of Claim 2, the distal end, *i.e.*, the end closest to the user's fingers, is raised relative to the medial end, *i.e.*, the end adjacent to the back of the chair. In marked contrast to the subject matter of Claim 2, the distal end of the armrest disclosed in Swenson cannot be raised relative to the medial end. Swenson *et al.*'s structure prevents a user from being able to raise the end of the armrest near the user's fingers relative to the end of the armrest nearest to the back of the chair. Instead, the device disclosed by Swenson *et al.* lowers the end of the armrest near the user's fingers relative to the end of the armrest nearest to the back of the chair. See Fig. 2. Thus, Swenson *et al.* teaches away from the claimed subject matter by teaching lowering, instead of raising, the distal end of the armrest.

Nonetheless, the Applicant recognizes that there is another meaning of the word distal that could be applied to identify the distal end of the armrest. According to the other meaning, the distal end is the end furthest point from the point of attachment. Arguably, in the device disclosed in the Swenson *et al.* reference, the end of the armrest that is the furthest from the point of attachment is not the end nearest to the user's fingers. Rather, according to this argument, because the links that support the armrest connect to the armrest support near the end of the

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armrest that is the end that is closest to the user's fingers in normal use of the armrest, the distal end of the armrest, according to this argument, is the end closest to the back of the chair.

However, if this meaning of distal is applied, the distal end of the armrest is the same end as the medial end (the end of the armrest closest to the midline). Because the distal end and the medial end are the same end if this meaning of distal is applied to Claim 2, this construction of Claim 2 is not reasonable. Rather, if the distal end and the medial end are the same end, the limitation that the distal end is raised relative to the medial end becomes meaningless, and can never be met, because the two ends are one and the same. Therefore this construction of Claim 2 is unreasonable, and thus, inappropriate.

Instead, a reasonable construction of this limitation of Claim 2 requires that the end of the armrest nearest to the end of the user's fingers is raised relative to the end of the armrest closest to the back of the chair. Because the Swenson *et al.* reference does the opposite, it raises the medial end relative to the distal end, this reference cannot be said to teach or suggest the claimed subject matter. Therefore the present rejection does not make a *prima facie* showing that the Swenson *et al.* reference taught or suggested the subject matter of Claim 2. Consequently, the rejection must be withdrawn.

### Claim 3

The Examiner also rejected Claim 3 as obvious over Swenson *et al.* One of the limitations of Claim 3 is that the claimed method includes "releasing said armrest in a manner effective to engage a locking mechanism that holds said armrest in the position it was placed." Because the Examiner has not made any showing that the Swenson *et al.* reference teaches or

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suggests this limitation, the Examiner has not made a *prima facie* showing of obviousness.

Consequently, this rejection must be withdrawn.

It is not believed that extensions of time are required. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

The present paper adds five (5) claims, but with the additional claims, the total number of claims remains less than twenty (20). Thus, it is believed that this communication does not occasion any additional total claim fees.

However, this paper adds three (3) further independent claims. The Commissioner is hereby authorized to charge these fees to Deposit Account No. 16-0605.

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In view of the present amendments and remarks, the Applicant respectfully submits that the application is now in condition for allowance and respectfully solicits the same at an early date. Nonetheless, if the Examiner has any questions, he is encouraged to call the undersigned at (212) 210-9518.

Respectfully submitted,



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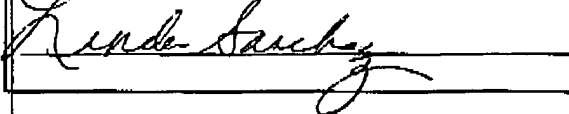
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## CERTIFICATION OF FACSIMILE TRANSMISSION

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